

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Amendment of the Commission's Regulatory)	IB Docket No. 96-111
Policies to Allow Non-U.S.-Licensed Space)	
Stations to Provide Domestic and International)	
Satellite Service in the United States)	
)	
and)	
)	
Amendment of Section 25.131 of the Commission's)	CC Docket No. 93-23
Rules and Regulations to Eliminate the)	RM-7931
Licensing Requirement for Certain International)	
Receive-Only Earth Stations)	
)	
and)	
)	
COMMUNICATIONS SATELLITE)	File No. ISP-92-007
CORPORATION)	
Request for Waiver of Section 25.131(j)(1) of the)	
Commission's Rules As It Applies to Services)	
Provided via the Intelsat K Satellite)	

REPLY OF GE AMERICAN COMMUNICATIONS, INC.

GE American Communications, Inc. ("GE Americom"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby replies to the Opposition filed by COMSAT Corporation ("COMSAT") concerning GE Americom's limited petition for reconsideration of the Commission's decision in the above-captioned proceedings, FCC 97-399 (rel. Nov. 26, 1997), 62 Fed. Reg. 64167 (Dec. 4, 1997) (hereinafter, the "*DISCO II Order*").

In its Petition, GE Americom demonstrated that the Commission should have deferred action regarding the terms under which Intergovernmental Satellite Organizations (“IGOs”) and their affiliates are permitted access to the U.S. market. In addition, we showed that the standards adopted for such entry fail to address the full scope of the competitive concerns raised by IGO participation in the U.S. market.

COMSAT’s Opposition is long on rhetoric and short on substance. COMSAT’s familiar complaints about its exclusion from the U.S. domestic market ignore the reality that COMSAT and the IGOs have advantages that will permit them to distort competition in that market. The Commission has the authority and the responsibility to take steps to ensure that does not happen.

Because there was no change in facts warranting adoption of a new policy for IGO entry, the Commission erred in addressing that issue in the *DISCO II Order*. At a minimum, the Commission must strengthen its standards to protect competition in the U.S. market from the threats associated with IGO entry.

**I. COMSAT FAILS TO ADDRESS THE FACTORS
JUSTIFYING DEFERRAL OF ACTION ON MARKET
ENTRY BY COMSAT AND IGO AFFILIATES**

In its Petition, GE Americom demonstrated that the Commission acted prematurely when it adopted standards to consider COMSAT and IGO affiliate entry into the U.S. market in the *DISCO II Order*. Petition at 3-5. We explained that such action was not necessary to implement the WTO Agreement, because IGOs are not covered by that agreement. Furthermore, we noted that the

Commission had failed to address the significant reasons put forth on the record by several commenters supporting deferral of IGO issues to a later stage of the proceeding. These include the need for special scrutiny of issues involving IGOs, the continued pendency of negotiations regarding restructuring of the IGOs, and the fact that Congress is considering legislation on these matters. *Id.*

In its response, COMSAT completely mischaracterizes GE Americom's arguments. COMSAT notes that issues involving IGO entry have been part of the DISCO II proceeding from the beginning, and that a substantial record on such issues has been developed. COMSAT Opposition at 5-7. GE Americom does not disagree. However, the existing record supports deferral of IGO issues. The Commission erred in rejecting without explanation the numerous arguments in the record explaining that action on IGO issues was premature.

Furthermore, COMSAT itself acknowledges that IGOs are not covered by the WTO agreement. COMSAT Opposition at 6. Thus, there was no reason for the Commission to move forward on IGO issues, because it had no WTO deadline to meet with respect to COMSAT and other IGO affiliates.¹

The comments in this proceeding provided multiple reasons why deferral of IGO issues was appropriate. The Commission, however, did not give any

¹ COMSAT erroneously suggests that GE Americom argued earlier in this proceeding that issues involving IGOs should be considered after completion of the WTO talks. COMSAT Opposition at 7 & n.14. In fact, GE Americom has argued from the beginning of this proceeding that action on IGO issues is premature while negotiations regarding the restructuring of the IGOs remain pending. GE Americom First Round Comments at 11.

reason why it determined that changing policies relating IGO entry now was warranted. The Commission should reconsider its decision, and address IGO issues in a separate proceeding.

II. COMSAT IGNORES THE FACTS JUSTIFYING REVISION OF THE COMMISSION'S IGO ENTRY POLICIES

COMSAT also does not come to terms with GE Americom's demonstration that at a minimum, changes in the Commission's policies with respect to IGO entry are necessary to protect competition in the satellite services market. Specifically, GE Americom showed that the Commission's standard for COMSAT entry into the U.S. domestic market failed to address key factors that slant the playing field in COMSAT's favor, including the special privileges and immunities enjoyed by the IGOs themselves, INTELSAT's preferential access to orbital locations, and the ability of COMSAT to cross-subsidize rates. Petition at 6-7.

In its response, COMSAT again resorts to hyperbole in place of reasoned analysis. COMSAT suggests that GE Americom is claiming that COMSAT "has some magical ability to engage in anticompetitive conduct." COMSAT Opposition at 9. Of course, there is nothing magical about it. COMSAT's ability to act anticompetitively stems simply from its status as the monopoly U.S. provider of services over satellite systems that do not have to play by the rules that apply to private satellite operators. As the Commission recognized, the "IGOs have

unique characteristics as treaty-based organizations that could enable them to distort competition.” *DISCO II Order* at ¶ 125.

COMSAT’s only substantive response to the defects identified by GE Americom in the Commission’s policy is to argue that the Commission lacks authority to require the IGOs themselves to waive their privileges and immunities. COMSAT Opposition at 9 n.19. Of course, the fact that neither the Commission nor any other regulatory body has jurisdiction over the IGOs is a large part of the problem. It is true that the Commission cannot require the IGOs to do anything, including waive their privileges and immunities. However, the Commission can and should refuse to allow COMSAT access to the U.S. domestic market as long as the IGOs retain those privileges and immunities.

Furthermore, COMSAT does not even attempt to deny here that INTELSAT’s preferential access to orbital locations is a significant competitive advantage. The Commission must truly level the playing field before it can consider allowing COMSAT to provide U.S. domestic services.

GE Americom’s Petition also highlighted the flaws in the test adopted for entry by new IGO affiliates in the *DISCO II Order*. Specifically, we argued that the Commission should retain the flexibility to reject entry by a new IGO affiliate if needed to protect competition in the U.S. Petition at 7-8. COMSAT’s only response is to suggest that under the WTO agreement, the Commission cannot treat IGO affiliates from WTO member countries differently than other licensees of WTO member countries. COMSAT Opposition at 13-14.

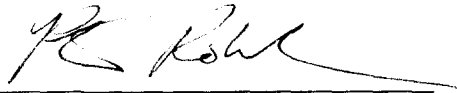
Again COMSAT misses the point. The Commission unquestionably has not only the authority but the obligation to determine whether grant of any individual application is consistent with the public interest. The Commission's decision to consider the relationship between an IGO and its affiliate in considering whether to permit the IGO affiliate to enter the U.S. market is consistent with this obligation and is clearly permissible under the WTO agreement. The Commission should retain full discretion to consider such issues when deciding whether to permit IGO spin-offs access to the U.S. market.

CONCLUSION

For the reasons discussed above and in GE Americom's Petition, the Commission should reconsider its *DISCO II Order* by eliminating or modifying the standard for entry by COMSAT and other IGO affiliates into the U.S. market.

Respectfully submitted,

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March 4, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of GE American Communications, Inc. was served by hand delivery this 4th day of March, 1998 to:

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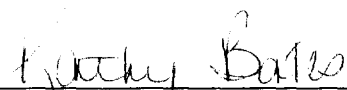
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